STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

In the Matter of:

Childhood Leukemia Foundation, Inc.,

Respondent.
_____________________________________/

Attorney General
File No. 2015-0117249-A

Notice of Intended Action and Cease and Desist Order

TO: Childhood Leukemia Foundation, Inc.

Registered Agent
CSC – Lawyers Incorporating Service
601 Abbot Road
East Lansing, MI 48823

Nathan Thomas
Copilevitz & Canter, LLC
310 W. 20th Street, Suite 300
Kansas City, Missouri, 64108

Bill Schuette, Attorney General of the State of Michigan, under Section 20(4) of the Charitable Organizations and Solicitations Act ("Solicitations Act"), MCL 400.290 *et seq*., gives Childhood Leukemia Foundation twenty-one days (21) to respond to this notice. If no satisfactory response is received within that time, the Attorney General intends to bring a civil action under Section 20(1) of the Solicitations Act.

I. Factual Allegations

A. Failure to Remove Complainant from Do-Not-Call List

1. Respondent Childhood Leukemia Foundation, Inc. ("CLF") is a New Jersey corporation with an address of 807 Mantoloking Rd., Suite 202, Brick, NJ 08723.

2. CLF is registered with the Michigan Department of Attorney General's Charitable Trust Section as a charitable organization (CS# 21230) under the Solicitations Act.

3. As a registered charitable organization that solicits in Michigan, CLF is a person subject to the authority of the Attorney General under the Solicitations Act. MCL 400.271 *et seq*; MCL 400.272(e).

4. On February 26, 2015, [redacted] complained to the Attorney General's Charitable Trust Section that CLF had been repeatedly calling him and failed to heed his requests to be removed from CLF's call list. **Exhibit 1**, [redacted] Complaint of 2/26/15.

5. Complainant stated that, from February 14 to February 22, CLF called Complainant 14 times. Following CLF's call on the evening of February 22, 2015, Complainant called CLF at (317) 788-2602 and left a voicemail requesting that his number be removed from CLF's call list. **Exhibit 1**, [redacted] Complaint of 2/26/15. Complainant also submitted to the Charitable Trust Section two call logs documenting his interactions with CLF: (1) a personal call log he created that shows incoming calls he received from CLF, and (2) an AT&T call log of his outgoing calls,

which supports Complainant's allegation that he contacted CLF multiple times requesting that they cease calling him. **Exhibit 2**, Call logs submitted by Complainant.

6. Complainant stated that, after leaving the voicemail for CLF, he received eight additional calls from CLF through 9:38 a.m. on Tuesday, February 24. **Exhibit 1**, [redacted] Complaint of 2/26/15. Complainant stated that "no one answers that number except a recording to leave a message and someone will get back with us. Our message stated that we are not interested in donating and to please remove our number [redacted] from their calling list." **Exhibit 1**, [redacted] Complaint of 2/26/15, page 2. Complainant then searched the internet for CLF and called their headquarters in Brick, New Jersey at (888) 253-7109. Complainant spoke with "Kate" and she apologized for the inconvenience and advised that the problem would be corrected. **Exhibit 1**, [redacted] Complaint of 2/26/15. Complainant's call log confirms that he called CLF at (888) 223-7109 on February 24, 2015 at both 9:50 and 9:52 a.m. **Exhibit 2**, AT&T Call Log.

7. Complainant states that, over the next two days, February 25, 2015 and February 26, 2015, Complainant received two additional calls each morning from CLF, thus bringing the total calls to 27, with 12 calls after Complainant's initial do-not-call request. **Exhibit 1**, [redacted] Complaint of 2/26/15. Complainant's call log shows that he attempted to reach CLF three additional times: (1) calling (317)-788-2602 at 9:42 a.m. on February 25, 2015, (2) calling (317)-788-2602 at 9:45 a.m. on February 26, 2015, and (3) calling the number of CLF's director, Barbara

Reid-Haramis at (732) 920-8860. **Exhibit 2**, AT&T Call Log. With the third call, Complainant was again connected to "Kate" who again promised to correct the problem. **Exhibit 1**, [redacted] Complaint of 2/26/15.

8. The afternoon of February 26, 2015, Complainant submitted his complaint to the Attorney General's Charitable Trust Section. **Exhibit 1**, [redacted] Complaint of 2/26/15.

9. On March 12, 2015, the Charitable Trust Section forwarded the complaint to CLF's counsel for response. **Exhibit 3**, AG Letter of 3/12/15.

10. On May 4, 2015, CLF's counsel responded, confirming that CLF had placed calls to Complainant during February 2015 and that on both February 24 and February 26, it had received Complainant's requests to be entered onto CLF's do-not-call list. **Exhibit 4**, CLF Response of 5/4/15. CLF also confirmed that Complainant's number of [redacted] had been placed onto CLF's do-not-call-list. *Id.* But CLF denied that it had received a February 22nd voicemail request from Complainant to be placed on its do-not-call list. *Id.*

11. On May 4, 2015, CLF also informed Complainant by mail that CLF "has immediately placed you on its internal Do-Not-Call List." **Exhibit 5**, CLF Letter to [redacted] of 5/4/15.

12. The Charitable Trust Section accepted CLF's response and closed Complainant's complaint.

13. On July 22, 2015, the Charitable Trust Section received a second complaint from [redacted]. **Exhibit 6**, [redacted] Complaint of 7/22/15.

Complainant complained that on July 21, 2015, he had received a solicitation request from CLF from telephone number 941-203-5908 in Sarasota, Florida, which was different than the previous Indiana number CLF had called from. *Id*.

14. The Charitable Trust Section forwarded the complaint to CLF for response and asked for records of all of CLF's calls to Complainant. **Exhibit 7**, AG Letter of 7/23/15.

15. On July 27, 2015, CLF responded via counsel, confirming that CLF had called Complainant at [redacted] on July 21, 2015 at 5:06 p.m. eastern time. **Exhibit 8**, CLF Response of 7/27/15. CLF offered the following excuse for the call: "the organization moved its office from Indianapolis, Indiana, to Sarasota, Florida. Somehow during the transition and setting up the equipment used to place telephone charitable solicitation calls, [redacted] was inadvertently removed from the Do-Not-Call List due to a computer glitch." *Id*. CLF failed to provide the requested records for calls it had made to Complainant during 2015 claiming that the records were unavailable due to its move from Indiana to Florida. *Id*.

16. In addition to the complaint from Complainant, the Attorney General has received other complaints against CLF in recent years. **Exhibit 9**, Other Complaints against CLF. On August 15, 2013, [redacted] complained CLF called him on August 14, 2013 and that he asked to be removed from their list; when the operator continued, eventually [redacted] hung up. *Id.* The next day, CLF called [redacted] again, and he again asked to be removed. In November 2011, [redacted] complained that CLF was calling her a few times a week to a

few times a day and that she had asked numerous times not to call and to be placed on their do-not-call list. *Id.* Nevertheless, for at least a year, CLF continued to call her. The Charitable Trust Section forwarded the complaint to CLF. CLF's executive director responded, blaming the calls on a new dialer system, and informed the complainant that her name would be removed from CLF's call list. *Id.*

17. The Attorney General also recently received a compilation of complaints from Children's Leukemia Foundation of Michigan, a separate 501(c)(3) Leukemia charity out of Michigan—not New Jersey. **Exhibit 10**, Complaints forwarded by Children's Leukemia Foundation of Michigan. Children's Leukemia Foundation of Michigan asserts that it does not solicit by phone, but that it has received these numerous complaints in recent years, many of which allege repetitive and harassing calls from a children's or childhood leukemia foundation. Because some of the complaints specifically reference addresses, phone numbers, or solicitation materials related to CLF, and because CLF has used a Michigan professional fundraiser, Innovative Teleservices of Port Huron, it is believed that many or most of these complaints were regarding CLF. These complaints lend further support for the present action.

B. Misrepresentation of Organization's Operations by Allocating Fundraising Expenses to Charitable Program Services

18. In 2012, CLF submitted its renewal solicitation registration to the Charitable Trust Section. **Exhibit 11**, CLF 2012 renewal materials.

19. After review, the Charitable Trust Section issued its Notice of Intention to Deny Registration and Opportunity to Request Informal Conference to CLF. **Exhibit 12**, AG Notice of Intention to Deny. The stated reasons for denial included that CLF's 2011 audited financial statements were not in accordance with generally accepted accounting principles ("GAAP") as required under the Solicitations Act because CLF had improperly allocated a portion of its professional fundraising expenses to its charitable program services.

20. Accounting for the joint costs of this type of fundraising activity is governed by the Financial Accounting Standard Board's Accounting Standards Codification[1] ("the ASC") which establishes GAAP in this area. According to the ASC, three criteria must be met in order to allocate the costs of a fundraising activity to program services: purpose, audience, and content.[2] The ASC further states: "The purpose criterion is not met if a majority of compensation or fees for any party's performance of any component of the discrete joint activity varies based on contributions raised for that discrete joint activity."[3] The ASC states that this guidance is the preeminent guidance; if the activity fails the compensation or fees test, the activity fails the purpose criterion and any separate tests shall not be considered.[4]

[1] FASB ASC 958-720-45-28 et seq., Accounting for Costs of Activities that Include Fundraising. This standard is based on the American Institute of Certified Public Accountant's Statement of Position 98-2, which is referenced on Form 990 along with the ASC.
[2] FASB ASC 958-720-45-29
[3] FASB ASC 958-720-45-40
[4] FASB ASC 958-720-45-43

21. CLF had entered into a contract with Innovative Teleservices ("Innovative"), a professional fundraiser, to make telemarketing calls for a fee based on a percentage of contributions received. **Exhibit 13**, Contracts between CLF and Innovative. CLF had allocated the fees paid under those contracts to both the fundraising expenses and charitable program service expenses in its financial statements. Because the fee paid to Innovative was based on a commission, this allocation violated GAAP and overstated CLF's charitable program services on its Form 990 thereby making it appear that CLF's charitable program services were far more extensive than they actually were.

22. Ultimately, following an informal conference between the Charitable Trust Section and CLF's legal counsel, CLF agreed to amend its Form 990 to correct the error. **Exhibit 14**, CLF Amended 2011 Form 990 and financial statements. The Charitable Trust Section accepted this resolution and determined not to revoke CLF's registration.

23. In 2013, when CLF renewed its registration by submitting its 2012 Form 990 and audited financial statements, CLF prepared the documents consistently with the amended 2011 financial statements and Form 990. **Exhibit 15**, CLF 2012 Form 990 (showing program services of $1.1 million out of total expenses of $4.2 million).

24. In 2014, CLF submitted its renewal registration and its 2013 financial statements and Form 990, but these financial documents reverted to the unacceptable, non-GAAP format previously rejected by the Attorney General: CLF

again wrongly allocated its professional fundraising expenses to its charitable program services and falsely claimed to be following SOP 98-2. **Exhibit 16**, CLF 2013 Form 990 and financial statements; specifically, see p. 10, line 26 "Joint Costs," where CLF checked the box indicating they were "following SOP 98-2."

25. In addition, the Campaign Financial Statement submitted by CLF's professional fundraiser Innovative Teleservices (and signed by both Innovative and CLF) for this period in June 2013, includes what appears to be an intentional deception by CLF and Innovative to allow CLF to use the joint cost allocation for its professional fundraising costs. **Exhibit 17**, Campaign Financial Statement. The Campaign Financial Statement states that Innovative billed $29 per hour for 12,745 hours of work, collecting $419,986 in gross receipts from donors and remitting $50,399 to CLF. Although the use of an hourly rate might have allowed CLF to use the joint cost allocation for some of its fundraising fees, the parties' contract on file with the Attorney General is percentage-based, with Innovative agreeing to receive 87% of gross receipts collected from donors.[5] Moreover, a calculation of the amounts received by Innovative from the gross receipts ($369,587/$419,986) shows that Innovative received exactly 88% of the contributions, which strongly suggests that CLF and Innovative had a percentage-based agreement.[6] In other words, CLF and Innovative included a false hourly rate and false hours on the Campaign Financial

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[5] Had the parties altered their contract to an hourly basis, they are required by law to submit that contract to the Attorney General.

[6] CLF's contract with Innovative calls for an 87% commission to be paid to Innovative rather than 88%. If the parties had actually modified their agreement to increase Innovative's compensation by one percent, their failure to provide this modified agreement to the Attorney General would violate the Solicitations Act.

Statement as a subterfuge to allow CLF to use a joint cost allocation of its professional fundraising fees.

26. Even if CLF was permitted under GAAP to allocate joint costs, the allocations taken were not reasonable. GAAP requires that the cost allocation methodology should be rational and systematic, and should result in an allocation that is reasonable.[7] According to CLF's financial statements and Form 990, the total amount of joint costs was $3,078,771—the total fees paid to Innovative during 2013. **Exhibit 16**, 2013 Form 990, p. 10, line 26. Of this amount, $2,463,015, or 80%, was allocated to CLF's charitable program services. *Id*. There is no rational or systematic basis for CLF's allocation of 80% of its professional fundraising fees as charitable program services.

27. Due to this falsification of the basis of fees paid and the unreasonable allocation, CLF's 2013 Form 990 and financial statements drastically overstate its charitable program services. By allocating $2.5 million out of its $3.1 million in fundraising expenses as charitable program services, on paper, CLF's charitable program services increased from $1.2 million to $3.7 million. **Exhibit 16**, 2013 Form 990, p. 10, see lines 25 and 26; see also **Exhibit 18**, 7/23/15 screenshot of www.mi.gov/charitysearch showing CLF's program services as 68.23% of total expenses (had CLF properly accounted its expenses, CLF's program services percentage would have been just 22.3% of its total expenses). In other words, between 2012 and 2013, CLF's activities remained essentially the same, but its

[7] American Institute of Certified Public Accountants Audit and Accounting Guide, *Not-for-Profit Entities,* paragraph 13.107.

2013 financial statements falsely showed that its charitable activities had more than tripled from $1.1 million to $3.7 million.

II. Law

28. Section 18 of the Solicitations Act prohibits persons subject to the Act from engaging in a variety of acts. MCL 400.288.

29. Section 18(1)(s) prohibits persons from: "Fail[ing] to comply with a person's request to remove, or not to share, the person's personal information, including, but not limited to, the person's name, address, telephone number, or financial account information, from any list utilized by a charitable organization or professional fund raiser for solicitation purposes[.]" MCL 400.288(1)(s).

30. Section 18(1)(u)(ii) prohibits persons from submitting to the Attorney General a "document containing any materially false statement[.]" MCL 400.288(1)(u)(ii).

31. Section 18(1)(y) prohibits persons from: "For a charitable organization, submit[ting] financial statements, including IRS form 990, 990-EZ, 990-PF, or other 990- series internal revenue service return, or any other financial report required under this act, that contain any misrepresentation with respect to the organization's activities, operations, or use of charitable assets." MCL 400.288(1)(y).

32. Section 18(1)(n) prohibits persons from: "Employ[ing] any device, scheme, or artifice to defraud or obtain money or property from a person by means of a false, deceptive, or misleading pretense, representation, or promise."

33. Section 18(1)(a) prohibits persons from "[e]ngag[ing] in a method, act, or practice in violation of this act or a rule promulgated under this act; any restriction, condition, or limitation placed on a registration or license; or any order issued under this act." MCL 400.288(1)(a). Section 3(2)(j) requires the following to be submitted with an organization's registration form:

> If the charitable organization received contributions in its immediately preceding tax year, as reported on the charitable organization's internal revenue service form 990, 990-EZ, 990-PF, or other 990-series return, in the amount of $500,000.00 or more, financial statements *prepared according to generally accepted accounting principles* and audited by an independent certified public accountant….[MCL 400.273(2)(j) (emphasis added)]

And Rule 400.241 states in part: "The charitable organization must show sound financial accounting, and show that all moneys expended have been applied to the carrying out of the announced purpose for which the agency is organized."

III. Violations of the Solicitations Act

34. The conduct alleged above violates the Charitable Organizations and Solicitations Act in the following ways.

35. Following Complainant's initial voicemail to CLF requesting to be removed from its call list, CLF called Complainant 12 additional times in February

2015. **Exhibit 1**, [redacted] Complaint of 2/26/15. With each call, CLF violated Section 18(1)(s) of the Solicitations Act, which prohibits persons subject to the act from failing to comply with a person's request to be removed from the organization's call list. [12 violations]

36. Several months after the resolution of the February Complaint, which included CLF's assurance that Complainant had been removed from CLF's call list, CLF called Complainant on July 21, 2015. **Exhibit 6**, [redacted] Complaint of 7/22/15; see also **Exhibit 8**, CLF Response of 7/27/15, confirming that it had called Complainant on July 21, 2015. With this call, CLF violated Section 18(1)(s) of the Solicitations Act, which prohibits persons subject to the act from failing to comply with a person's request to be removed from the organization's call list. [1 violation]

37. CLF's submission of its registration renewal materials and accompanying financial statements in 2014 falsely included joint cost allocations that are not permitted under GAAP and violated Section 18(1)(u)(ii) of the Solicitations Act, which prohibits persons from submitting to the Attorney General a "document containing any materially false statement[.]" [1 violation]

38. CLF's submission of its registration renewal materials in 2014, which included its audited financial statements and IRS Form 990 that included improper joint cost allocations and consequently misrepresentations regarding CLF's charitable programs, violated Section 18(1)(y) of the Solicitations Act, which prohibits charitable organizations from submitting financial statements containing

any misrepresentation with respect to the organization's "activities, operations, or use of charitable assets." MCL 400.288(1)(y). [1 violation]

39. CLF's improper use of joint cost allocations in its 2013 financial statements to categorize $2.5 million of its $3.1 million in professional fundraising expenses as charitable program services submission inflated its charitable program services from $1.2 million to $3.7 million and violated Section 18(1)(n) of the Solicitations Act, which prohibits persons subject to the Act from: "Employ[ing] any device, scheme, or artifice to defraud or obtain money or property from a person by means of a false, deceptive, or misleading pretense, representation, or promise." [1 violation]

40. CLF's use of joint cost allocations in its 2013 financial statements violated GAAP and failed to show sound financial accounting in violation of Section 18(1)(a) of the Solicitations Act, which prohibits persons subject to the Act from violating the Act or a rule promulgated under the Act. CLF's improper use of joint cost allocations violated Section 3(2)(j) of the Act, which requires that financial statements be prepared according to generally accepted accounting principles, by (1) improperly jointly allocating its professional fundraising expenses to its charitable program services in violation of GAAP, and (2) by unreasonably allocating 80% of these fundraising costs to charitable program services. [2 violations] CLF's improper and unreasonable use of joint cost allocations also violated Rule 400.241 which requires organizations to show sound financial accounting. [2 violations]

41. CLF signed a false Campaign Financial Statement in June 2013 and had it submitted to the Attorney General; the statement claimed that Innovative Teleservices' professional fundraising fees were based on a rate of $29 per hour and hours of 12,745 when, in fact, CLF's contract with Innovative was percentage-based, violating Section 18(1)(u)(ii) of the Solicitations Act, which prohibits persons from submitting to the Attorney General a "document containing any materially false statement[.]" [1 violation]

IV. Attorney General's Authority

42. Section 20 of the Solicitations Act specifies the Attorney General's authority to redress violations of the Solicitations Act, including:

a. Issuing a Notice of Intended Action, MCL 400.290(4);

b. Issuing a Cease and Desist Order, MCL 400.290(4);

c. Bringing a civil action in court with a fine of up to $10,000 per violation, MCL 400.290(1);

d. Accepting an Assurance of Discontinuance; MCL 400.290(4); and

e. Requesting injunctive relief, MCL 400.290.

43. Section 20 also allows the Attorney General to proceed against individual officers, directors, shareholders, or controlling members of CLF. MCL 400.290(1).

V. Cease and Desist Order

44. The Attorney General HEREBY ORDERS Childhood Leukemia Foundation, Inc. to CEASE and DESIST from making any calls to the Complainant and from calling other Michigan citizens after they have requested to be removed from CLF's call list.

45. Violations of this order may result in a civil action for civil fines or revocation of CLF's charitable solicitation registration.

VI. Opportunity to Respond

46. Within twenty-one (21) days of receiving this Notice, CLF has the opportunity to respond to the undersigned Assistant Attorney General. During this period, CLF must also submit its solicitations materials to the undersigned Assistant Attorney General.

47. If no satisfactory response is reached during this period, the Attorney General intends to bring a civil action against CLF in circuit court; the Attorney General will request injunctive relief and civil fines for each violation described in Section III, above. Each of the twenty-one violations[8] described in Section III are subject to a civil fine of up to $10,000. If the Attorney General elects to proceed in court, CLF faces a total fine of up to $210,000 as well as the Attorney General's reasonable attorney fees and costs.

[8] 13 violations of Section 18(1)(s), see above, ¶¶ 35 and 36; 2 violations of Section 18(1)(u)(ii), ¶¶ 37 and 41; 1 violation of Section 18(1)(y), ¶ 38; 1 violation of Section 18(1)(n), ¶ 39; and 4 violations of Section 18(1)(a), ¶ 40.

BILL SCHUETTE
ATTORNEY GENERAL

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William R. Bloomfield (P68515)
Assistant Attorney General
Corporate Oversight Division
P.O. Box 30755
Lansing, MI 48909
Phone: (517) 373-1160
bloomfieldw@michigan.gov

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